

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

AREZOU MANSOURIAN, LAUREN MANCUSO,  
NANCY NIEN-LI CHIANG, and  
CHRISTINE WING-SI NG, et al.,

CIV S-03-2591 FCD PAN

Plaintiffs,

v.

ORDER

BOARD OF REGENTS OF THE UNIVERSITY  
OF CALIFORNIA AT DAVIS, et al.,

Defendants.

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Defendants move to compel compliance with subpoenas served October 2005 upon Sutter Davis Hospital and the U.C. Davis Student Health Center for the psychological records of plaintiff Nancy Nien-li Chiang from August 1, 1998 to present. Plaintiff opposes the motion. The February 15, 2006, hearing on this matter is vacated and the court issues this order.

Plaintiffs filed their complaint December 18, 2003,

1 alleging discrimination based on defendants' 2001 termination of  
2 the women's wrestling program at U.C. Davis. Ms. Chiang was a  
3 student enrolled at U.C. Davis and a wrestler on the women's team  
4 when it was terminated. The complaint seeks, inter alia,  
5 "monetary damages for . . . emotional distress, lost self-esteem  
6 and confidence, humiliation, and other compensatory damages that  
7 result from being denied equal opportunity on the basis of sex."  
8 Complaint, at pp. 54-55.

9       Plaintiff seeks to withhold her psychological records due  
10 to the potential embarrassment of disclosing information about an  
11 "unrelated" mental health disorder. She argues this information  
12 is irrelevant to her emotional distress claim because she will  
13 refrain in this litigation from attributing any relationship  
14 between the two, will stipulate to only "garden variety" distress  
15 in this action, and will refrain from relying on her own records  
16 or calling her own psychological experts. These measures do not,  
17 however, extinguish the clear relevance of plaintiff's  
18 comprehensive psychological records to her emotional distress  
19 claim and to defendants' right to prepare a defense. Fed. R.  
20 Civ. P. 26(b)(1) ("[p]arties may obtain discovery regarding any  
21 matter, not privileged, that is relevant to the claim or defense  
22 of any party"); Fitzgerald v. Cassil, 216 F.R.D. 632, 634 (N.D.  
23 Cal. 2003) ("[t]he psychological records are relevant in  
24 determining causation for . . . or the magnitude of the alleged  
25 distress").

26       However, plaintiff maintains, and this court finds, that

1 plaintiff's psychological records are protected by the  
2 psychotherapist-patient privilege. Jaffee v. Redmond, 518 U.S. 1  
3 (1996). The consequence of plaintiff's resistance to any waiver  
4 of this privilege-this is the third time this court has addressed  
5 Ms. Chiang's efforts to withhold her psychological records-is  
6 that Ms. Chiang's emotional distress claim be stricken from the  
7 complaint and she be precluded from pursuing or recovering any  
8 damages attributable to injury to her psychological or emotional  
9 state. Defendants may, within ten days of service of this order,  
10 move to strike any other of Ms. Chiang's claims to which the  
11 evidence barred by assertion of her privilege may be relevant,  
12 e.g., fitness for participation in the program. The subpoenas  
13 are quashed.

14 So ordered.

15 Dated: February 8, 2006.

16 /s/ Peter A. Nowinski  
17 PETER A. NOWINSKI  
18 Magistrate Judge  
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